European and External Relations Committee
The EU referendum and its implications for Scotland
Written submission from Inclusion Scotland

Key points:

- Current equalities and human rights protections for disabled people may be undermined by withdrawal from the European Union.
- Other equalities protections though not affected directly by withdrawal from the EU will be negatively impacted over time.
- The funding of social protection and equalities initiatives of importance to disabled people and other equalities groups is likely to be seriously impacted by withdrawal from the European Union.

The EU Referendum and Disabled People’s Human Rights:

European Court of Justice & European Convention Rights: Because of the tenor of the EU Referendum debate and the conflation of issues many people believe that the European Convention on Human Rights and the European Court of Human Rights are creations of the European Union. They are not. The European Convention on Human Rights and the Court originate from the Council of Europe, which is a completely different organisation from the European Union (EU).

The Human Rights Act 1998 incorporates the rights contained in the European Convention into domestic British law. Leaving the EU would have no effect on these rights, nor on the Human Rights Act, which is a piece of UK legislation.

However the Home Secretary has announced (22/8/16) that the Human Rights Act will be repealed and replaced with a British Bill of Rights. It remains to be seen what the British Bill of Rights will consist of but it seems likely that there will be some reduction in future access to the European Court of Human Rights and/or limits placed on the impact of the European Court of Human Rights’ decisions on UK law.

Human Rights and the European Union:

Respect for human dignity, equality and human rights are founding values of the EU. The sources of these rights in the EU are:

- the Charter of Fundamental Rights of the European Union (the Charter)
- the constitutional traditions which are common to EU member states and rights contained in EU Treaties.

As long as the UK continues to remain a member of the EU, EU law applies in the UK. This will no longer necessarily be the case once “Brexit” has been negotiated.
Member ship of the EU has also led to changes in UK law which protect equality and human rights. The following are some examples - Data Protection; Human trafficking & Rights of victims of crime are laws which originated from the EU.

A number of European Union directives and regulations have led to improved protection for disabled people. These include ensuring that employment protection standards apply to all employers, not just larger employers, requiring assistance to be provided for disabled people when travelling (including by air, sea, and coach), and, a requirement that the packaging of medicinal products must include Braille labelling.

However the following protections did not originate in EU law

- **Non-discrimination in employment on grounds of sex, race and disability**
- **The public sector equality duty**
- **Non-discrimination in the provision of goods and services**: In EU law there is no equivalent protection for the protected characteristics of disability, sexual orientation, age and religion or belief, but domestic law does provide such protections.

The Charter of Fundamental Rights reaffirms the rights, freedoms and principles already recognised in EU law. It can be easier for claimants in UK courts to use the Charter to protect their rights, instead of relying on the Human Rights Act.

**EU Case law** has also led to improvements in equality law of importance to disabled people and other equalities groups. In particular -

- **Discrimination by association**: In Coleman v Attridge Law (2008) the European Court of Justice held that the protection against discrimination ‘on grounds of disability’ must be interpreted to include discrimination faced by a mother who was the principal carer of her disabled son, or ‘discrimination by association’. When the Equality Act 2010 was passed, direct discrimination was defined to cover discrimination by association.

- **Sex discrimination and equal pay**: ECJ case law extended equal pay to include all forms of pay including pensions; gave women improved protection against discrimination during pregnancy.

- **Ensuring full compensation for discrimination**: in 1993 the ECJ held that compensation for sex discrimination must be adequate and could not be capped as was the case in UK law at that time.

Therefore although withdrawal from the EU would not affect existing UK case law it would obviously impact in the future as case law decisions arising from the European Court of Justice would no longer be binding on British courts. Thus rights and protections available elsewhere in Europe might no longer be available to disabled people in Scotland.
Disabled EU citizens residency requirements

Any change in the status of EU nationals resident in the UK might disproportionately impact on disabled people. For example if a work or earnings requirement was imposed on those wishing to maintain residency (such as has already applied to non-EU citizens like the Brain family) then disabled EU nationals might have greater difficulty complying with it as their ability to obtain work, particularly well paid employment, is adversely affected by discrimination and stigma. This could mean that they are unwillingly forced to return to their country of origin even though they have ties to friends and local communities in Scotland.

What impact might the UK leaving the EU have on equality and human rights laws in the UK?

On the repeal of the European Communities Act 1972 all of the treaties and the EU Charter of Fundamental Rights would no longer have effect in domestic law. Also, EU regulations, and any future or unimplemented EU legislation, could no longer be relied on in UK courts.

A key impact on disabled people would be that the proposed European Accessibility Act, which make products and services more accessible to disabled persons, would not be brought into UK law.

However, many of the protections under EU law have already been implemented into UK domestic law by legislation. These laws themselves would have to be repealed or amended otherwise any rights conferred by them would continue to apply.

It has been suggested that, prior to leaving the European Union, the UK will negotiate a trade agreement with the EU. The existing models for such trade agreements require EU trading partners to comply with EU law (at least in the areas covered by the trade agreement). Therefore, leaving the EU, and conducting trade through a new trading agreement, would not necessarily result in lower protections for human rights and equality in domestic law.

Is Scotland different?

Many of the protections flowing from the EU are contained in domestic law (the UK Parliament having implemented EU secondary legislation). Under the Scotland Act 1998 the power to make secondary legislation under the European Communities Act 1972 in relation to devolved matters was transferred to Scottish Ministers. It would therefore be possible, following a UK exit, for uneven protection to exist in different parts of the United Kingdom.

Secondly domestic courts in the UK already have the power to quash legislation from the Welsh Assembly, the Scottish Parliament or the Northern Ireland Assembly that conflicts with ECHR rights. Therefore Scottish courts might be petitioned by disabled people (and others) seeking to access rights flowing from the European Union or to overturn legislation which sought to diminish such rights.
The ECHR is also embedded in the Scotland Act which would mean that the Scotland Act itself would need to be amended to dis-apply its impact on the actions of the Parliament and Scottish Ministers.

**Conclusion:** Although the EU Referendum and Brexit pose problems for equalities law and disabled people’s Human Rights there may be less of an impact in Scotland than was initially thought.

**European Funding and Social Cohesion:**

Although article 50 has not (yet) been triggered people and funding are already being impacted by the prospect of future withdrawal. The larger scale impacts in Scotland are likely to be in the areas of funding and social cohesion.

The Brexit result has already resulted in the policy focus of Scottish Government shifting to the constitutional and economic consequences of withdrawal for Scotland. Civil Servants and Ministers are already working on these issues perhaps at the cost of neglecting other important and pressing issues.

Funding for equalities related initiatives is also under threat and affected by uncertainty. Although the UK Government has guaranteed EU funding up to 2018 the Scottish Government want guarantees that last until at least 2020. EU structural funding is now running late causing great concern throughout the Third Sector.

The loss of EU funding would have a particular impact on the provision of employability support and skills training which is of vital importance to all equalities groups including disabled people. Other funded programmes like Erasmus are also under threat. There may also be a loss of sources of international funding (for example Inclusion Scotland’s partner organisation, Disability Action Northern Ireland, lost $5million from a funder based in New York). As a Disabled People’s Organisation we will also lose access to European Networks trying to advance disabled people’s rights.

Brexit could also have a negative impact on the UK economy affecting living standards and how much money the Government has to spend e.g. if UK and Scottish Government revenues fall then there will be less money available through both the Block Grant and devolved tax raising. That in turn could lead to Scottish Government reducing funding to equalities groups such as our own placing in jeopardy our ability to achieve our objectives and mission.

**Conclusion:** These funding concerns are of more immediate impact than some of the potential but likely to be delayed threats to human rights protections.